

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Miller, T.A. CONFIRMATION NUMBER : 8627
S.E.P.T. 14/2008
AUG 28 2009
PATENT & TRADEMARK OFFICE
SERIAL NUMBER : 10/600,132 EXAMINER : Valenrod, Y.
(Now U.S. Patent No.
7,456,219)
FILING DATE : June 19, 2003 ART UNIT : Ref: 05/04/2010 GARIAS 0013102300
FOR : Polymorphs of Suberoylanilide Hydroxamic Acid Name/Number:10600132
\$200.00 CR

MAIL STOP PATENT EXT.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Adjustment date: 05/04/2010 GARIAS
08/31/2009 RMEBRAH1 00000078 10600132
-200.00 OP
01 FC:1435

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)

Sir:

This Application is submitted in response to the Decision on Request for Reconsideration of Patent Term Adjustment and Notice of Intent to Issue Certificate of Correction (herein the "Decision"), mailed on July 28, 2009.

The above-identified application issued as U.S. Patent No. 7,456,219 on November 25, 2008. The total patent term adjustment calculated by the USPTO for this application was 795 days. The USPTO arrived at this PTA by calculating 821 days under 37 C.F.R. §1.702(a)(1), (2), and (4), plus 890 days under 37 C.F.R. §1.702(b). (See, e.g., pages 6-7 of the Decision, particularly Footnote 5). The USPTO then determined that all 890 days under the 37 C.F.R. §1.702(b) period overlapped with the 821 days under the 37 C.F.R. §1.702(a) period, but did not add the §1.702(a) and §1.702(b) periods together. Rather, the USPTO took the 890 days under the §1.702(b) period as the maximum USPTO delay and then subtracted the period of applicant delay (the USPTO calculated applicant delay as 95 days), thereby arriving at 795 days.

This Application seeks to correct two errors. First, the period of applicant delay should have been calculated as 74 days, not 95 days -- the USPTO's 21 day "deduction" for the September 18, 2008 IDS was not proper (as detailed herein). Second, because the §1.702(a) and §1.702(b) periods do not overlap, contrary to what was stated in the Decision, the USPTO should add the entire §1.702(a) period during which the application was pending, less any USPTO delay occurring after June 15, 2006 (which was 3 years from the date the application was filed), plus

08/31/2009 RMEBRAH1 00000078 10600132
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Express Mail Label No.: EM 360782798US
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Attorney Docket No. 24852-201002US
(Formerly 24852-501 CIP)

No additional fees are believed to be due; however, the Commissioner is authorized to charge such fee, or credit any overpayment in fees to Deposit Account No. 50-0311, Customer Number 35437, Attorney Docket No. 24852-201002US.

Respectfully submitted,

Dated: August 28, 2009

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11 REFUND REQUESTED BY: <u>C. T. Donnell</u> TYPED/PRINTED NAME: <u>C. T. Donnell</u> TITLE: <u>Pet. Atty</u> SIGNATURE: <u>C. T. Donnell</u> PHONE: <u>571 272 3211</u> OFFICE: <u>Office of Petitions</u> ***** THIS SPACE RESERVED FOR FINANCE USE ONLY ***** APPROVED: <u>[Signature]</u> DATE: <u>05/09/10</u>				

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